



## COMMONWEALTH OF VIRGINIA

### *Department of Mines, Minerals and Energy*

Ninth Street Office Building / 8<sup>th</sup> Floor  
202 North Ninth Street  
Richmond, Virginia 23219-3402  
(804) 692-3200 FAX (804) 692-3237  
[www.dmme.virginia.gov](http://www.dmme.virginia.gov)

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Contact: Mike Abbott (276) 523-8146

Jan Zentmeyer (276) 523-8215

### **DMME Releases Final Investigation Report on Inman Offsite Fatality**

#### **Report incorporates responses to public comments received at November public meeting**

Big Stone Gap, VA – Today the Department of Mines, Minerals and Energy (DMME) released its final investigation report into the August 20, 2004, mining-related death of three-year old Wise County resident, Jeremy Kyle Davidson. Jeremy, the son of Dennis and Cindy Davidson of Inman, Virginia, was killed by a large rock dislodged from the Matt Mining Company, Inc./A & G Coal Corporation, Strip No. 13 mine. The rock, weighing an estimated 1,000 pounds, was dislodged during unauthorized reconstruction of a mine access road. The rock rolled approximately 649 feet down a steep, wooded hillside, penetrated the rear exterior wall of the child's bedroom, and struck the bed where the child was sleeping, causing fatal injuries.

The final report includes DMME's investigation findings, conclusions and recommendations. Also included are individual responses from the agency to comments and recommendations received from a legislative panel and the public during a November 4, 2004, public meeting held in Big Stone Gap, VA. Governor Mark Warner and Delegate Clarence "Bud" Phillips asked that the public meeting be held to present DMME's draft findings to a panel of coalfield legislators, including delegates Jackie Stump and Phillips, and senators William Wampler and Phillip Puckett. Delegate Terry Kilgore stepped down from the panel since he is serving as attorney to the Davidson family. Secretary of Commerce and Trade Michael Schewel represents Governor Warner on the panel and served as moderator at the public meeting. Secretary Schewel asked that DMME respond to the comments received at the meeting.

#### **Conclusions**

Based upon the cumulative failures of the company to take prudent precautions in an area known to be a potential hazard area for the residents below, DMME concluded that A & G demonstrated gross negligence by committing the following unauthorized actions that resulted in the death of Jeremy Kyle Davidson. A & G conducted the reconstruction work at night above occupied dwellings; assigned a dozer operator inexperienced in road construction to perform the work in an area of known potential hazard to residents below; widened the existing access road to haul coal; reconstructed the road without an approved plan; failed to visually monitor the placement of material to prevent placing it over the hillside on the steep slope over 50%; constructed the road embankment on a slope greater than 36% without the required keyway cut and two-foot compacted lifts; and caused a rock to be dislodged that rolled down the hillside, entered the residence of Dennis and Cindy Davidson and struck their son's bed, resulting in fatal injuries.

Enforcement actions taken by DMME resulted in fines to Matt Mining Company, Inc./A & G Coal Corporation of \$15,000, the maximum amount allowed under the Virginia Coal Surface Mining Control and Reclamation Act. DMME turned over its investigation findings to the Wise County Commonwealth Attorney and subsequently to Scott County Commonwealth Attorney Marcus McClung, who was selected by Wise County Judge Robert Stump to act as a special prosecutor.

#### Recommendations

DMME has made a series of recommendations in the final report designed to prevent similar tragedies and address public safety. These recommendations include full compliance with existing mining laws and regulations that address public safety issues where mining operations occur near or above public dwellings. In addition the agency has recommended legislative changes to regulations that would provide for:

- More detailed ground control plans for mining operations;
- Advance notification to residents when ground disturbing activities will take place above them;
- Additional and more visible (including at night) permit boundary markers or the use of spotters to prevent the accidental dislodgement of material above dwellings;
- Empowering the Division of Mines Chief to require training to abate violations and require action plans to address hazardous conditions and procedures, and to compel attendance of witnesses and to administer oaths during an investigation; and
- Increasing the maximum civil penalty to \$70,000 per violation for violations that result in personal injury or fatalities to the public.

DMME has also proposed two actions to address blasting activities on mine sites, the most frequent area of citizen complaints. The first proposal would require seismic monitoring of all blasting conducted within 1,000 feet of a private dwelling or other occupied building. The second recommends that Virginia's congressional delegation seek funding and provide direction to the National Academy of Sciences for a study of the effects of blasting on property. The study should review the U.S. Bureau of Mines' past studies on blasting, more recent studies of the effect of blasting on structures, and the effect of blasting on ground control, control of flyrock, and related issues. DMME would use the result of this study to determine whether amendments to mineral extraction blasting laws or regulations are necessary.

#### DMME Responses to comments received at the public meetings

Approximately 300 people attended the public meeting before the legislative panel on November 4, 2004, and in addition to the three legislative panel members who spoke, 21 other people spoke or delivered written comments. Additional written comments were received by the agency after the public meeting. Public comments covered a range of subjects including the fatal accident, a variety of mining related complaints not related to the fatality, complaints about coal haul truck traffic on public roads and concerns that DMME is not responsive to citizen complaints. In the final report, DMME responded individually to each of the speakers and to the written comments received by the agency to address their comments and recommendations. The agency has also provided historical background in its responses to specific complaints and offered extensive explanations of its authority and jurisdiction in an effort to better inform the public of its role and responsibilities.

Copies of the final report and the public meeting transcript are available on CD for \$1.00 each by contacting the Department of Mines, Minerals and Energy Customer Assistance Center at (276) 523-8235. Paper copies are available for \$20.00 for the final report (138 pages, plus attachments) and \$8.75 for the public meeting transcript (55 pages). These documents are also available for public review at the Department of Mines, Minerals and Energy office in Big Stone Gap from 8:00 a.m. to 5:00 p.m., Monday through Friday.

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